

Assembly Bill No. 2629

CHAPTER 211

An act to amend Sections 1507.3, 1566.45, and 1568.0832 of the Health and Safety Code, relating to health facilities.

[Approved by Governor August 27, 2010. Filed with
Secretary of State August 27, 2010.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2629, Bonnie Lowenthal. Residential facilities.

Existing law provides for the licensing and regulation of residential facilities under the California Community Care Facilities Act and residential care facilities for persons with chronic life-threatening illness by the State Department of Social Services. Violation of these provisions constitutes a misdemeanor.

Under existing law, bedridden persons may be admitted to, and remain in, any of the above-described residential facilities if the facility secures and maintains an appropriate fire clearance. Under existing law, a person is not classified as "bedridden" if he or she has a temporary illness that persists for 14 days or less.

This bill would, instead, exclude from the definition of "bedridden" a temporary illness or recovery from surgery that persists for 14 days or less. The bill would also permit a residential facility to retain a bedridden client in excess of 14 days if prescribed conditions are met.

This bill would prohibit a residential facility, except for an Adult Residential Facility for Persons with Special Health Care Needs (ARFPSHN), from admitting or retaining a client if he or she requires 24-hour skilled nursing care. The bill would also require a residential facility that admits or retains a bedridden person, within 48 hours of admission or retention, to notify the fire authority of the estimated length of time that the person will retain his or her bedridden status in the facility. This bill would make other conforming changes.

By creating a new crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 1507.3 of the Health and Safety Code is amended to read:

1507.3. (a) Notwithstanding Section 1566.45 or any other provision of law, a residential facility that provides care to adults may obtain a waiver from the department for the purpose of allowing a resident who has been diagnosed as terminally ill by his or her physician and surgeon to remain in the facility, or allowing a person who has been diagnosed as terminally ill by his or her physician and surgeon to become a resident of the facility if that person is already receiving hospice services and would continue to receive hospice services without disruption if he or she became a resident, when all of the following conditions are met:

(1) The facility agrees to retain the terminally ill resident, or accept as a resident the terminally ill person, and to seek a waiver on behalf of the individual, provided the individual has requested the waiver and is capable of deciding to obtain hospice services.

(2) The terminally ill resident, or the terminally ill person to be accepted as a resident, has obtained the services of a hospice certified in accordance with federal medicare conditions of participation and licensed pursuant to Chapter 8 (commencing with Section 1725) or Chapter 8.5 (commencing with Section 1745).

(3) The facility, in the judgment of the department, has the ability to provide care and supervision appropriate to meet the needs of the terminally ill resident, or the terminally ill person to be accepted as a resident, and is in substantial compliance with regulations governing the operation of residential facilities that provide care to adults.

(4) The hospice has agreed to design and provide for care, services, and necessary medical intervention related to the terminal illness as necessary to supplement the care and supervision provided by the facility.

(5) An agreement has been executed between the facility and the hospice regarding the care plan for the terminally ill resident, or the terminally ill person to be accepted as a resident. The care plan shall designate the primary caregiver, identify other caregivers, and outline the tasks the facility is responsible for performing and the approximate frequency with which they shall be performed. The care plan shall specifically limit the facility's role for care and supervision to those tasks authorized for a residential facility under this chapter.

(6) The facility has obtained the agreement of those residents who share the same room with the terminally ill resident, or any resident who will share a room with the terminally ill person to be accepted as a resident, to allow the hospice caregivers into their residence.

(b) At any time that the licensed hospice, the facility, or the terminally ill resident determines that the resident's condition has changed so that continued residence in the facility will pose a threat to the health and safety of the terminally ill resident or any other resident, the facility may initiate procedures for a transfer.

(c) A facility that has obtained a hospice waiver from the department pursuant to this section, or an Adult Residential Facility for Persons with Special Health Care Needs (ARFPSHN) licensed pursuant to Article 9 (commencing with Section 1567.50), need not call emergency response services at the time of a life-threatening emergency if the hospice agency is notified instead and all of the following conditions are met:

(1) The resident is receiving hospice services from a licensed hospice agency.

(2) The resident has completed an advance directive, as defined in Section 4605 of the Probate Code, requesting to forego resuscitative measures.

(3) The facility has documented that facility staff have received training from the hospice agency on the expected course of the resident's illness and the symptoms of impending death.

(d) Nothing in this section is intended to expand the scope of care and supervision for a residential facility, as defined in this chapter, that provides care to adults nor shall a facility be required to alter or extend its license in order to retain a terminally ill resident, or allow a terminally ill person to become a resident of the facility, as authorized by this section.

(e) Nothing in this section shall require any care or supervision to be provided by the residential facility beyond that which is permitted in this chapter.

(f) Nothing in this section is intended to expand the scope of life care contracts or the contractual obligation of continuing care retirement communities as defined in Section 1771.

(g) The department shall not be responsible for the evaluation of medical services provided to the resident by the hospice and shall have no liability for the independent acts of the hospice.

(h) The department, in consultation with the State Fire Marshal, shall develop and expedite implementation of regulations related to residents who have been diagnosed as terminally ill who remain in the facility and who are nonambulatory that ensure resident safety but also provide flexibility to allow residents to remain in the least restrictive environment.

(i) Nothing in this section shall be construed to relieve a licensed residential facility that provides care to adults of its responsibility to do both of the following:

(1) Notify the fire authority having jurisdiction of the presence of a bedridden resident in the facility as required pursuant to subdivision (e) of Section 1566.45.

(2) Obtain and maintain a fire clearance from the fire authority having jurisdiction.

(j) The requirement in paragraph (1) of subdivision (a) to obtain a waiver, and the requirement in paragraph (1) of subdivision (i) shall not apply to a facility licensed as an ARFPSHN pursuant to Article 9 (commencing with Section 1567.50).

SEC. 2. Section 1566.45 of the Health and Safety Code is amended to read:

1566.45. (a) (1) For purposes of this section, “bedridden” means requiring assistance in turning and repositioning in bed or being unable to independently transfer to and from bed, except in a facility with appropriate and sufficient care staff, mechanical devices, if necessary, and safety precautions, as determined by the director in regulations.

(2) In developing the regulations for child residential facilities, the department shall take into consideration the size and weight of the child.

(3) For purposes of this section, the status of being bedridden shall not include a temporary illness or recovery from surgery that persists for 14 days or less.

(4) The determination of the bedridden status of persons with developmental disabilities shall be made by the Director of Social Services or his or her designated representative, in consultation with the Director of Developmental Services or his or her designated representative, after consulting the resident’s individual safety plan. The determination of the bedridden status of all other persons with disabilities who are not developmentally disabled shall be made by the Director of Social Services, or his or her designated representative.

(b) No client shall be admitted to or retained in a residential facility if he or she requires 24-hour skilled nursing care, except for a facility licensed as an Adult Residential Facility for Persons with Special Health Care Needs pursuant to Article 9 (commencing with Section 1567.50).

(c) A bedridden person may be admitted to, and remain in, a residential facility that secures and maintains an appropriate fire clearance. A fire clearance shall be issued to a facility in which one or more bedridden persons reside if either of the following conditions are met:

(1) The fire safety requirements are met. Clients who are unable to independently transfer to and from bed, but who do not need assistance to turn or reposition in bed, shall be considered nonambulatory for purposes of this paragraph.

(2) Alternative methods of protection are approved.

(d) Notwithstanding paragraph (3) of subdivision (a), a bedridden client may be retained in a residential facility in excess of 14 days if all of the following requirements are satisfied:

(1) The facility notifies the department in writing that the person is recovering from a temporary illness or surgery.

(2) The facility submits to the department, with the notification required in paragraph (1), a physician and surgeon’s written statement to the effect that the client’s illness or recovery is of a temporary nature. The statement shall contain an estimated date upon which the illness or recovery is expected to end or upon which the client is expected to no longer be confined to bed.

(3) The department determines that the client’s health and safety is adequately protected in the facility and that transfer to a higher level of care is not necessary.

(4) This subdivision does not expand the scope of care and supervision of a residential facility.

(e) Notwithstanding the length of stay of a bedridden client, every residential facility admitting or retaining a bedridden client shall, within 48 hours of the client's admission or retention in the facility, notify the fire authority having jurisdiction over the bedridden client's location of the estimated length of time the client will retain his or her bedridden status in the facility.

(f) (1) The department and the Office of the State Fire Marshal, in consultation with the State Department of Developmental Services, shall each promulgate regulations that meet all of the following conditions:

(A) Are consistent with this section.

(B) Are applicable to facilities regulated under this chapter, consistent with the regulatory requirements of the California Building Standards Code for fire and life safety for the respective occupancy classifications into which the State Department of Social Services' community care licensing classifications fall.

(C) Permit clients to remain in homelike settings.

(2) At a minimum, these regulations shall do both of the following with regard to a residential care facility that provides care for six or fewer clients, at least one of whom is bedridden:

(A) Clarify the fire and life safety requirements for a fire clearance for the facility.

(B) Identify procedures for requesting the approval of alternative means of providing equivalent levels of fire and life safety protection. Either the facility, the client or client's representative, or local fire official may request from the Office of the State Fire Marshal a written opinion concerning the interpretation of the regulations promulgated by the State Fire Marshal pursuant to this section for a particular factual dispute. The State Fire Marshal shall issue the written opinion within 45 days following the request.

(g) For facilities that care for six or fewer clients, a local fire official shall not impose fire safety requirements stricter than the fire safety regulations promulgated for the particular type of facility by the Office of the State Fire Marshal or the local fire safety requirements imposed on any other single family dwelling, whichever is more strict.

(h) This section and regulations promulgated thereunder shall be interpreted in a manner that provides flexibility to allow bedridden persons to avoid institutionalization and be admitted to, and safely remain in, community-based residential care facilities.

SEC. 3. Section 1568.0832 of the Health and Safety Code is amended to read:

1568.0832. (a) (1) For purposes of this section, "bedridden" means requiring assistance in turning and repositioning in bed or being unable to independently transfer to and from bed, except in a facility with appropriate and sufficient care staff, mechanical devices, if necessary, and safety precautions, as determined by the director in regulations.

(2) For purposes of this section, the status of being bedridden shall not include a temporary illness or recovery from surgery that persists for 14 days or less.

(3) The determination of the bedridden status of persons with developmental disabilities shall be made by the Director of Social Services or his or her designated representative, in consultation with the Director of Developmental Services or his or her designated representative, after consulting the resident's individual safety plan. The determination of the bedridden status of all other persons with disabilities who are not developmentally disabled shall be made by the Director of Social Services, or his or her designated representative.

(b) A bedridden person may be admitted to, and remain in, a residential facility that secures and maintains an appropriate fire clearance. A fire clearance shall be issued to a facility in which one or more bedridden persons reside if either of the following conditions are met:

(1) The fire safety requirements are met. Residents who are unable to independently transfer to and from bed, but who do not need assistance to turn or reposition in bed, shall be considered nonambulatory for purposes of this paragraph.

(2) Alternative methods of protection are approved.

(c) Notwithstanding paragraph (2) of subdivision (a), a bedridden resident may be retained in a residential care facility in excess of 14 days if all of the following conditions are met:

(1) The facility notifies the department in writing that the person is recovering from a temporary illness or surgery.

(2) The facility submits to the department, with the notification required in paragraph (1), a physician and surgeon's written statement to the effect that the resident's illness or recovery is of a temporary nature. The statement shall contain an estimated date upon which the illness or recovery is expected to end or upon which the resident is expected to no longer be confined to bed.

(3) The department determines that the resident's health and safety is adequately protected in the facility and that transfer to a higher level of care is not necessary.

(4) This subdivision does not expand the scope of care and supervision of a residential care facility.

(d) Notwithstanding the length of stay of a bedridden resident, every residential facility admitting or retaining a bedridden resident shall, within 48 hours of the resident's admission or retention in the facility, notify the fire authority having jurisdiction over the bedridden resident's location of the estimated length of time the resident will retain his or her bedridden status in the facility.

(e) (1) The department and the Office of the State Fire Marshal, in consultation with the State Department of Developmental Services, shall each promulgate regulations that meet all of the following conditions:

(A) Are consistent with this section.

(B) Are applicable to facilities regulated under this chapter, consistent with the regulatory requirements of the California Building Standards Code for fire and life safety for the respective occupancy classifications into which

the State Department of Social Services' community care licensing classifications fall.

(C) Permit residents to remain in homelike settings.

(2) At a minimum, these regulations shall do both of the following with regard to a residential care facility that provides care for six or fewer residents, at least one of whom is bedridden:

(A) Clarify the fire and life safety requirements for a fire clearance for the facility.

(B) Identify procedures for requesting the approval of alternative means of providing equivalent levels of fire and life safety protection. Either the facility, the resident or resident's representative, or local fire official may request from the Office of the State Fire Marshal a written opinion concerning the interpretation of the regulations promulgated by the State Fire Marshal pursuant to this section for a particular factual dispute. The State Fire Marshal shall issue the written opinion within 45 days following the request.

(f) For facilities that care for six or fewer residents, a local fire official shall not impose fire safety requirements stricter than the fire safety regulations promulgated for the particular type of facility by the Office of the State Fire Marshal or the local fire safety requirements imposed on any other single family dwelling, whichever is more strict.

(g) This section and any regulations promulgated thereunder shall be interpreted in a manner that provides flexibility to allow bedridden persons to avoid institutionalization and be admitted to, and safely remain in, community-based residential care facilities.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.